

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/08/2002

CORAM

THE HONOURABLE MR JUSTICE N. DHINAKAR
and
THE HONOURABLE MR JUSTICE A. PACKIARAJ

Habeas Corpus Petition No. 252 Of 2002

Dhayalan ... Petitioner

-Vs-

1. The Government of Tamilnadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram. ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for the issue of a writ of Habeas Corpus, calling for the records of the detention order made in BDFGIS No.22 of 2002 dated 25.1.2002 passed by the District Collector and District Magistrate, Kancheepuram District, Kancheepuram, the second respondent herein and set aside the same and direct the respondents to produce the detenu now confined in Central Prison, Chennai before this Hon'ble Court and set the detenu Dayalan, Son of Arumugam at liberty.

!For Petitioner : Mr. R.Balakrishnan

^For Respondent : Mr.I.Subramanian
Public Prosecutor.

:O R D E R

(Order of the Court was delivered by N. DHINAKAR, J)

The petitioner is the detenu and he challenges the order of detention dated 25.1.2002 passed by the second respondent detaining him under the provisions of Tamil Nadu Act 14 of 1982, after he was identified as a "bootlegger", since he had come to the adverse notice of the authorities on earlier occasions and that on 6.1.2002 he indulged in activities prejudicial to the maintenance of public health and that if he is let to remain at large,

he will indulge in such further activities and that therefore, there is a compelling necessity to detain him.

2. We are not extracting the details of the grounds of detention, since both sides have agreed that the above Habeas Corpus Petition has to be considered on the following short ground.

3. The learned counsel appearing for the petitioner submits that in the grounds of detention, the detaining authority has stated that the detenu was produced before Judicial Magistrate, Tambaram and was remanded to judicial custody in Sub Jail, Poonamallee from 6.1.2002 to 18.1.2002 and thereafter his remand period was extended upto 1.2.2002 and for the said statement, there was no material available before the detaining authority to indicate that the detenu was actually remanded and detained in Sub Jail, Poonamallee and therefore, the order of detention gets vitiated.

4. We have heard the learned Public Prosecutor on the above contention and the Public Prosecutor, repelling the said contention, argues that what is expected of the detaining authority is awareness that the detenu is in custody and not where he is temporarily detained in custody.

5. We see some force in the contention of the learned Public Prosecutor. We have perused the remand order, which shows that the detenu was produced before the Magistrate and was remanded. The grounds of detention also show that the detaining authority has applied his mind to the fact that whether the detenu is in custody and whether he is likely to come out on bail and in the event of his coming out on bail, whether he is likely to indulge in further activities prejudicial to the maintenance of public health and the necessity of detaining the detenu and thereafter, passed the order of detention. Apparently the detaining authority has relied upon the affidavit of the sponsoring authority to make the statement that the detenu was detained at Sub Jail, Poonamallee and in our view no prejudice is caused to the cause of the petitioner on the ground that copy of the affidavit of the sponsoring authority was not furnished to the detenu though the detaining authority has referred to it while passing the order of detention.

6. In R.K. KHANDELWAL -vs- STATE OF U.P. (A.I.R. 1981 S.C. 1672), the Supreme Court has held that the affidavit of the sponsoring authority is in the nature of a mere forwarding letter and not the basis of any of the grounds of detention and therefore, there is no need to supply the detenu with a copy of the affidavit.

7. Further, in MERUGU SATHYANARAYANA -vs- STATE OF ANDHRA PRADESH (1983 SUPREME COURT CASES (CRL.) 18), the Supreme Court has stated that where a preventive order may have to be made against a person already confined to jail or detained, the detaining authority must show awareness that the person sought to be detained is already in jail or under detention and yet a preventive detention order is a compelling necessity and that such an awareness would show that such a person is not a free person to indulge into a prejudicial activity, which is required to be prevented by detention order and that this awareness must also find its place either in the detention order or

in the affidavit justifying the detention order when it challenged.

8. Similar view was taken by the Supreme Court in BAL CHAND BANSAL -vs- UNION OF INDIA (1988 SUPREME COURT CASES (CRL.) 356). The Supreme Court, while rejecting the contention of the petitioner, held that the detaining authority was fully aware of the fact that the petitioner was already in custody and that he was likely to be released on bail on April 13, 1987 and to arrive at that finding, the Supreme Court relied upon the original records placed before it for perusal and held that even assuming that the detaining authority is not entitled to rely on the original file for the purpose and that the awareness of the detaining authority ought to appear from the grounds themselves, further held that the grounds indicate that the detaining authority was conscious of the fact that the detenu was in judicial custody and was apprehensive that he will be released on bail and therefore, the order is not vitiated.

9. The above principles laid down by the Supreme Court, therefore, show that what is expected of the detaining authority is, his awareness that the detenu is in custody and he is likely to come out on bail and therefore, there is a compelling necessity to pass an order of detention and if that awareness is seen on the face of the detention order, the fact that the detenu was in custody at one place or other is not relevant. Therefore, we are of the view that the order of detention is not vitiated on that ground, though on earlier occasions we have held that order gets vitiated on account of such statement of fact in the grounds of detention, since on the earlier occasions, the above three judgments of the Supreme Court were not brought to our notice. The contention, therefore, fails and the Habeas Corpus Petition is, accordingly, dismissed.

(N.D.J.) (A.P.J.)

20.08.2002

Index:Yes

Website:Yes

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To

1.The Secretary to Government,
State of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and
District Collector,Kancheepuram District.

3.The Superintendent, Central Prison,Chennai.

4.The Joint Secretary to Government,

State of Tamil Nadu,
Public (Law and Order) Department,
Fort St. George, Chennai-600 009.

5.The Public Prosecutor, High Court, Chennai.

N.DHINAKAR, J
and
A.PACKIARAJ, J

H.C.P.No.252 Of 2002

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